



The statements are also unfairly prejudicial under Fed. R. Evid. 403. A limiting instruction cannot cure the unfair prejudice of allowing the jury to hear backward-looking statements made by Mr. Brisette about the Top Chef incidents a year after they occurred, particularly when the statements themselves have no probative value. Moreover, the content of the statements are unfairly prejudicial because, during his interview, Mr. Brisette expressed regret for the Top Chef situation generally. While such statements are natural and understandable, the government apparently intends to use them to argue around the Court's limiting instruction – that is, the government seeks to use Mr. Brisette's statements to suggest (or even overtly argue) that the jury should draw an unsupported and inaccurate inference that Mr. Brisette's conduct was criminal or wrongful – despite the undisputed fact that Mr. Brisette has never been charged with any wrongdoing in connection with Top Chef.

Mr. Brisette's 2015 statements should also clearly be excluded as to Mr. Sullivan. These statements do not pertain to Mr. Sullivan and have no bearing on Mr. Sullivan's knowledge and intent with respect to the charged events. As a result, the statements are not relevant and are unfairly prejudicial as to him because there could be no plausible purpose for their admission except to inappropriately suggest to the jury first that Mr. Brisette's conduct was wrongful, and then to incorrectly impute that finding onto Mr. Sullivan.

For these reasons, the defendants request that the Court exclude evidence concerning the statements Mr. Brisette made to the government on July 30, 2015.

Respectfully submitted,

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